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| 23869 | 7590 | 06/15/2007 | | |
| HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791 | | | EXAMINER PELLEGRINO, BRIAN E | |
| | | | ART UNIT 3738 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/823,456

Applicant(s)

NAZZARO, PATRICE

Examiner

Brian E. Pellegrino

Art Unit

.3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 65-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 and 79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/2/04, 7/19/04, 9/12/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I and Specie A, a graft in the reply filed on 3/20/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 65-78 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Objections

Claim 58 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 49 already recites the warp and fill yarns are polymeric.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14,16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14,16 recite the limitation "the different yarn" in line 3 of the claims.

There is insufficient antecedent basis for this limitation in the claims. It is ambiguous.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6,7,10-21,24-29,31,32,35,36,38-41,44-46,79 are rejected under 35 U.S.C. 102(b) as being anticipated by Liebig et al. (4517687). Fig. 1 shows a vascular graft material formed of a double velour (col. 3, line 22) weave having a plurality of warp yarns **14** and a plurality of fill yarns **13**. Fig. 3 shows a radially crimped graft with first and second same diameter sections having third greater diameter bulbous sections positioned between throughout its length and a second end with two lumens. Liebig discloses the woven material is a polyester, col. 2, lines 13-18. Liebig also discloses the warp and fill yarns can be double ply and 40 denier, col. 3, lines 59,60. Liebig additionally discloses (col. 2, lines 18-21) that different yarn materials can be used, which would result in portions with different deniers and types.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,5,22,23,33,34,42,43,47-56,58-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebig et al. '687 in view of Nunez et al. (5800514). Liebig

et al. is explained supra. However, Liebig et al. fail to disclose the dimensions or diameters of the graft. Nunez et al. teach (Fig. 3) a woven vascular graft having a larger diameter section and a smaller diameter section with the smaller diameter being about 10mm and the larger diameter being 2mm greater than the smaller, col. 7, lines 60-66. It would have been obvious to one of ordinary skill in the art to use the dimensions or diameters of a graft for the sections as taught by Nunez et al. with the graft of Liebig et al. such that it could result in a more closely matching contour to the vessel in which it is placed.

Regarding claims 22,23,42,43,49,50 Liebig does disclose the number of warp yarns is greater than the fill yarns, col. 2, lines 38-40. However, Liebig et al. fail to disclose the first end of the bulbous portion includes an increase of at least three more warp yarns than fill yarns and the second end decreases by three warp yarns to every two fill yarns. Nunez et al. teach that seamless grafts are formed with an equal number of warp yarns increasing at one end to the other end decreasing, col. 9, lines 12-18. It would have been obvious to one of ordinary skill in the art to use the teaching of keeping equivalent warp yarns increased at one end of a section such as the larger diameter portion as the number of warp yarns at the second end of the section as taught by Nunez et al. in the graft of Liebig et al. so that the wall is made contiguous. It would have been an obvious matter of design choice to modify the number of warp yarns to increase or decrease at a rate of three warp yarns to two fill yarns, since Applicant has not disclosed that using a ratio of three to two warp to fill provides any advantage, or solves a stated problem, or is used for any particular purpose. One of

ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the ratio taught by Nunez/Liebig or the claimed three warp/two fill in claim(s) 22,23,42,43 because both vascular grafts perform the same function of providing a seamless structure.

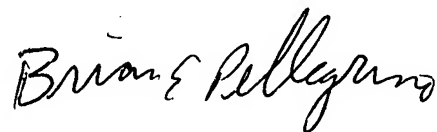
Claims 8,9,30,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebig et al. '687 in view of De Paulis (6352554). Liebig et al. is explained supra. However, Liebig et al. fail to disclose the portion of the graft being bulbous has a different pattern or includes a valve. De Paulis teaches (Fig. 5) a vascular graft having a valve in a bulbous, different pattern section of a graft. De Paulis also teaches that the different pattern (col. 5, lines 28-30) enables the graft to enable pressure to be reduced at the coronary ostia, col. 6, lines 42-45. It would have been obvious to one of ordinary skill in the art to use a different pattern and valve as taught by De Paulis in the graft of Liebig et al. such that it can be used in the coronary ostia when repairing an aorta.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liebig et al. '687 in view of Nunez et al. '514 as applied to claim 55 above, and further in view of De Paulis '554. Liebig et al. in view of Nunez et al. is explained as before. DePaulis is explained above. However, Liebig as modified by Nunez et al. fail to disclose the sections of the graft having different patterns. It would have been obvious to one of ordinary skill in the art to use a different pattern and valve as taught by De Paulis in the graft of Liebig et al. as modified by Nunez et al. such that it can be used in the coronary ostia when repairing an aorta.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M- F (8:30am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



BRIAN E. PELLEGRINO
PRIMARY EXAMINER